

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

<p>PRESERVE FRENCH CREEK, INC.,</p> <p>Plaintiff,</p> <p>vs.</p> <p>CORBIN HERMAN, UNKNOWN OFFICIALS OF CITY OF CUSTER, SOUTH DAKOTA, CITY OF CUSTER, SOUTH DAKOTA, HUNTER ROBERTS, UNKNOWN OFFICIALS OF DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES, SOUTH DAKOTA DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES, DEWILD, GRANT, RECKERT AND ASSOCIATES COMPANY,</p> <p>Defendants.</p>	<p>5:25-CV-05045-RAL</p> <p>OPINION AND ORDER DENYING MOTIONS TO DISMISS, CANCELLING MOTION HEARING, AND SETTING RESPONSE DEADLINES</p>
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Plaintiff Preserve French Creek, Inc., filed its Complaint on May 15, 2025. Doc. 1. On June 9, 2025, Plaintiff filed an Emergency Motion for Temporary Restraining Order, Doc. 14, and, this Court entered a preliminary injunction based on a stipulation from the parties without the Court having weighed or ruled on any of the Dataphase factors to enjoin the Defendants from discharging from the publicly owned treatment works in the City of Custer into French Creek with the intention that the preliminary injunction would be in place until a decision by this Court on the Dataphase factors.

On June 30, 2025, Defendants Hunter Roberts, the South Dakota Department of Agriculture and Natural Resources, the City of Custer, Corbin Herman, and Unknown Officials of

City of Custer moved to dismiss the Complaint, Docs. 27, 30, and Defendant DeWild, Grant, Reckert and Associates Company filed an Answer, Doc. 29. This Court then granted Plaintiff's request for an extension to respond and request to respond to both Motions to Dismiss by filing an Omnibus Response. This Court then worked with counsel to schedule a motion hearing for argument on the motions to dismiss and on the preliminary injunction for August 29, 2025, which was intended to occur after the briefing on the Motions to Dismiss was completed.

Before the deadline to file its Omnibus Response, Plaintiff filed an Amended Complaint on July 21, 2025, Doc. 37, the final day to amend under Fed. R. Civ. P. 15(a)(1)(B). The filing of an amended complaint generally renders a motion to dismiss moot. See Pure Country, Inc. v. Sigma Chi Fraternity, 312 F.3d 952, 956 (8th Cir. 2002). However, if an amended complaint contains the same defects raised in the original motion to dismiss, a court may consider the motion. 6 Fed. Prac. & Proc. Civ. § 1476 (3d ed. May 20, 2025 update). This Court, therefore, ordered that the Defendants need not respond to the Amended Complaint, given the timing of the scheduled motion hearing, to determine whether the parties wished to be heard on the Motions to Dismiss notwithstanding the subsequently filed Amended Complaint. The parties have informed this Court that under these circumstances they wish to cancel the Motion Hearing scheduled for August 29, 2025, and proceed under new deadlines. It is therefore

ORDERED that Defendants' Motions to Dismiss, Docs. 27, 30, are denied as moot. It is further

ORDERED that the Motion Hearing scheduled for August 29, 2025, in Rapid City, South Dakota, is cancelled. It is further

ORDERED that the deadline for Defendants to respond to Plaintiff's Amended Complaint shall be Wednesday, August 13, 2025, and that the District of South Dakota Local Rules shall govern any applicable subsequent deadlines.

DATED this 30th day of July, 2025.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Roberto A. Lange". The signature is fluid and cursive, with the first name "Roberto" being the most prominent part.

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ROBERTO A. LANGE  
CHIEF JUDGE